

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
GARMIN INTERNATIONAL, INC.)
)
Request for Waiver of Family Radio Service Rule)
Sections 95.193(a) and 95.631(d) to Authorize)
Manufacture, Sale and Use of GPS Transmission)
Enhanced Family Radio Service Units)

ORDER

Adopted: August 21, 2003

Released: August 25, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On May 8, 2003, Garmin International, Inc. (Garmin) filed a petition¹ for clarification of a waiver, initially granted on September 29, 2000,² to allow Garmin to manufacture and market hand-held Family Radio Service (FRS) transceivers capable of transmitting Global Positioning System (GPS) location on FRS channels. Specifically, in light of a February 10, 2003, *Report and Order* adopting rules that differ from the terms of the waiver,³ Garmin asks that we extend “grandfather” status for ninety days to existing units that are in compliance with the waiver but not with the revised rules. The petition requests action in order to permit the sale of the remaining units manufactured pursuant to the waiver. For the reasons stated below, we grant Garmin’s request.

2. *Background.* In 1996, the Commission established the FRS as a very short distance, two-way personal radio service.⁴ The Commission envisioned that the FRS would provide an affordable and convenient means of direct, short-range two-way voice communications among small groups of persons, with minimal regulation.⁵ To prevent the FRS from being used as a substitute for other personal communications services, non-voice emission types, except tones transmitted to establish or continue voice communications, were not authorized.⁶

3. On June 22, 2000, Garmin requested a waiver of Section 95.193(a) of the Commission’s

¹ Petition for Clarification (filed May 8, 2003) (*Petition*).

² See Garmin International, Inc., *Order*, 15 FCC Rcd 19143 (WTB PSPWD 2000) (*Waiver Grant*).

³ See Garmin International, Inc., *Report and Order*, Docket No. WT 01-339, 18 FCC Rcd 2349 (2003) (*Report and Order*).

⁴ See Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Radio Service, *Report and Order*, WT Docket No. 95-102, 11 FCC Rcd 12977 (1996).

⁵ *Id.* at 12978 ¶ 2.

⁶ *Id.* at 12984 ¶ 13; see also 47 C.F.R. §§ 95.193(a), 95.631(d) (2002).

Rules,⁷ which allows FRS units to be used solely to conduct two-way voice communications and certain described one-way voice communications.⁸ Garmin also requested a waiver of Section 95.631(d) of the Commission's Rules, which limits FRS units to using emission type F3E and selective calling or tone-operated squelch tones to establish or continue voice communications.⁹ Garmin maintained that these waivers were necessary for it to receive FCC certification for a FRS transceiver capable of transmitting location information derived from the GPS.¹⁰ On December 26, 2000, Garmin filed a *Petition for Rulemaking* seeking to codify the terms of the requested waiver.¹¹

4. In an *Order* released September 29, 2000, the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division) concluded that grant of a waiver was warranted, but imposed certain technical specifications upon Garmin intended to ensure that Garmin's enhanced FRS radio did not compromise the basic nature of the FRS, and limited the waiver to a one-year period, *i.e.*, until September 29, 2001.¹² One of the terms of the waiver was that the units be designed to limit transmission of GPS-derived information to once every ten seconds.¹³ On reconsideration, the Division extended the waiver period to two years, *i.e.*, until September 29, 2002, in order to afford Garmin a meaningful opportunity to make this equipment available in the market, given the time it takes to bring a new product to market.¹⁴

5. On December 20, 2001, the Commission released a *Notice of Proposed Rulemaking* seeking comment on whether to amend the FRS rules as proposed by Garmin.¹⁵ On August 21, 2002, the Division extended the waiver until completion of the rulemaking proceeding, in light of the time required to bring a new product to market, and the continued pendency of Garmin's rulemaking proposal before the Commission.¹⁶

6. On February 10, 2003, the Commission released its *Report and Order*, amending Sections 95.193(a), 95.193(b) and 95.631(d) of its Rules to review the scope of permissible communications and emissions types for FRS units.¹⁷ In doing so, the Commission adopted a thirty-

⁷ 47 C.F.R. § 95.193(a).

⁸ See Letter, dated June 22, 2000, from Garmin International, Inc. to Federal Communications Commission.

⁹ See 47 C.F.R. § 95.631(d). Emissions are designated by an alphanumeric code that indicates the type of modulation of the main carrier, nature of the signal(s) modulating the main carrier, and the type of information to be transmitted. See 47 C.F.R. § 2.201(b). F3E is a type of frequency modulated voice emission. See 47 C.F.R. § 2.201(e).

¹⁰ *Waiver Grant*, 15 FCC Rcd at 19144 ¶ 3.

¹¹ *Petition for Rulemaking*, RM-10070 (filed Dec. 26, 2000).

¹² *Waiver Grant*, 15 FCC Rcd at 19148 ¶ 11.

¹³ *Id.* at 19146-48 ¶¶ 8-10.

¹⁴ See Garmin International, Inc., *Order*, 16 FCC Rcd 7753, 7755 ¶ 5 (WTB PSPWD 2001).

¹⁵ See Garmin International, Inc., *Notice of Proposed Rulemaking*, WT Docket No. 01-339, 16 FCC Rcd 22876 (2001).

¹⁶ Garmin International, Inc., *Order*, 17 FCC Rcd 16108, 16110 ¶ 5 (WTB PSPWD 2002).

¹⁷ See *Report and Order*, 18 FCC Rcd at 2350 ¶ 1.

second duty cycle, instead of Garmin's proposed duty cycle of a digital data emission not to exceed one second of every ten seconds, out of concerns raised that widespread use of units with the shorter cycle could create significant congestion.¹⁸ The *Report and Order* was published in the Federal Register on March 3, 2003.¹⁹

7. *Discussion.* In the instant petition, Garmin states that it was unable to deplete its inventory of the ten-second units prior to April 2, 2003, the effective date of the new rules.²⁰ Garmin requests an additional ninety days to dispose of the enhanced FRS units manufactured pursuant to the terms of the initial waiver. We agree that an extension is appropriate. Based on the information Garmin has provided, and given that that Commission modified the proposed duty cycle, we will allow Garmin a reasonable period of time to exhaust its inventories of existing ten-second enhanced FRS units manufactured pursuant to the initial waiver. Because this extension applies only to units manufactured pursuant to the waiver prior to release of the *Report and Order*, we do not believe that sale of this limited number of ten-second units will result in significant congestion. Accordingly, we grant the petition and extend the waiver period for a period of ninety days from the date of this *Order*.

8. *Ordering Clauses.* Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.925, the Petition for Clarification filed by Garmin International, Inc. on May 8, 2003, IS GRANTED.

9. IT IS FURTHER ORDERED that the waiver granted to Garmin International, Inc., on September 29, 2000, and subsequently extended on April 12, 2001, and August 21, 2002, IS EXTENDED for a period of ninety days from the date of this *Order*, under the same terms and conditions as the original waiver.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁸ *Id.* at 2356 ¶ 16.

¹⁹ 68 Fed. Reg. 9900 (2003).

²⁰ *Petition* at 3.

